

DOCKET No. 17-485

**IN THE SUPREME COURT
OF THE UNITED STATES**

IN RE ROBERT K. HUDNALL

Robert K. Hudnall – Petitioner

vs.

State Bar of Georgia - Respondents

PETITION FOR REHEARING

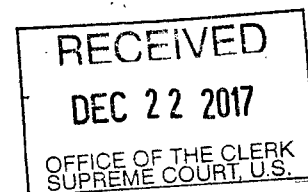
SUPREME COURT OF THE STATE OF GEORGIA
(NAME OF COURT THAT LAST RULED ON MERITS OF THE CASE)

ROBERT K. HUDNALL

5823 N. MESA, #839

EL PASO, TEXAS 79912

915-478-1114



Petitioner respectfully requests a rehearing of the decision to deny his prayer that an Extraordinary Writ of Mandamus issue to review the judgment below.

OPINIONS BELOW

In The Matter of Robert K. Hudnall, 259 Ga. 247, 379 SE2d 517 (Ga. 1989).

(Appendix A)

JURISDICTION

The original order by the Supreme Court of the State of Georgia was entered May 25, 1989 (Appendix A). The order of the Georgia Supreme Court refusing to accept Petitioner's motion for re-hearing was dated March 17, 1994 (Appendix B).

Jurisdiction in this Court is invoked under 28 U.S.C. Section 1257(a). This writ will be in aid of the Court's appellate jurisdiction in that a State Supreme Court has decided a constitutional issue contrary to U.S. Supreme Court decisions and in a method that is repugnant to the concept of due process of law.

This decision was granted without jurisdiction and in violation of constitutionally protected rights to due process of law, and in violation of U.S. Supreme Court decisions, and is void on its face and could have been set aside by any court, at any time, but no court has agreed to hear the issue citing full faith and credit and judicial discretion (Rule 20.1).

This request for rehearing is made under the provisions of Rule 44 of the Rules of the Supreme Court of the United States, Part VIII, Disposition of Cases.

FEEES

Petitioner would show that on October 2, 2017, this Court did grant Petitioner's Motion¹ to Proceed as a Veteran and requested waiver of fees under 38 U.S.C. Section

¹ Motion 17M30

4301-4335 (specifically 38 U.S.C. Section 4334, 4324 and 4325 also known as USERRA).

This Petition is a continuation of the original case.

STATEMENT OF THE CASE

As shown in Petitioner's **Corrected Petition for An Extraordinary Writ of Mandamus²**, Petitioner's rights were taken from him as well as his right to practice law based upon a decision by the Georgia Supreme Court cited as **IN THE MATTER OF ROBERT K. HUDNALL**, 259 GA. 247 (1989), 379 S.E.2D 517.

The decision by the Georgia Supreme Court was based entirely on a document cited as **PETITION FOR VOLUNTARY SURRENDER OF LICENSE** (Petition) supposedly submitted by this Petitioner. This document and its contents were submitted to the State Supreme Court of Georgia, as a court of original jurisdiction, under the provisions of State Bar Rule 4-102 by the Office of General Counsel of the State Bar of Georgia. The matter of this Petitioner's rights was handled as an administrative matter by the State Bar and then converted into a judicial order by the State Supreme Court with no notice to Petitioner. Such action was done under the rules of the State Supreme Court

The State Bar of Georgia³ prepared the document titled **Petition for Voluntary Surrender of License**, which purported to be Petitioner's resignation from the practice of law. With no notice to Petitioner, the document styled as a **Petition for Voluntary Surrender of License**, prepared in its entirety by Assistant General Counsel Paul B. Cohen, and signed by some person unknown was used as the basis for recommending that the Supreme Court of Georgia accept Petitioner's resignation in violation of Georgia law.

² Supreme Court docket number 17-485.

³ The author of the Voluntary Petition for Surrender of License was Paul B. Cohen, Assistant General Counsel of the State Bar of Georgia at that time.

The U.S. Supreme Court has long protected the rights of an accused guaranteed under the U.S. Constitution. In fact, this court has held that a judgment may not be rendered in violation of constitutional protections and has even gone so far as to say that the validity of a judgment may be affected by a failure to give the constitutionally required due process notice and an opportunity to be heard. This petitioner had his rights taken by what amounts to a Star Chamber, but this Court has not protected Petitioner's rights to due process of law.

Since the Petition submitted by the State Bar to the State Supreme Court was not written by Petitioner nor signed by Petitioner but held out by the Bar as Petitioner's resignation, and it was not authenticated as required by Georgia State Law it is in the way of illegally obtained evidence which would be covered by the exclusionary rule which specifically precludes evidence collected or analyzed in violation of the Petitioner's constitutional rights from being adduced in a court of law. However, again, Petitioner's constitutional rights were ignored.

The U.S. Supreme Court addressed the issue of disbarment proceedings in a case cited as In Re Ruffalo⁴. In this case, the U.S. Supreme Court held that a lawyer charged with misconduct in a disbarment proceeding is entitled to procedural due process, which includes fair notice of charges. The Court further stated that absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprive petitioner of procedural due process. Neither of these rights were afforded this Petitioner.

The State Bar used the alleged Petition as a form of confession and apparently decided that Petitioner had waived all of his Constitutional rights. However, this action by

⁴ In Re Ruffalo, 390 U.S. 544 (1967)

the State Bar of Georgia was contrary to the holding in *Geiger v. Jenkins* where the U.S. Supreme Court held that *actions by state agencies to take the license to practice away from a professional are criminal in nature. The accused is entitled to protections normally given to individuals accused of crimes.*

In Petitioner's case, the alleged Petition was submitted to the Court by the State Bar of Georgia under an administrative rule, with no notice to this Petitioner nor any opportunity to be heard. Since the State Bar was bringing the action against Petitioner and the State Bar of Georgia is and was an arm of the Supreme Court of the State of Georgia⁵, their actions constituted a conflict of interest. This conflict of interest violated the Sixth Amendment to the United States Constitution in that there was neither a speedy nor a public trial by an impartial jury of the State and district where the crime shall have been committed.

Additionally, the Sixth Amendment to the U.S. Constitution entitled Petitioner to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him to have compulsory process for obtaining witness in his favor and to have the Assistance of Counsel for his defense. Petitioner was denied all of these entitlements, but this Court ignores these facts. Which raises a new question for this Court to decide:

May an attorney be punished for representing Black clients?

The Supreme Court of the State of Georgia was not empowered to empanel a jury and the accusers were employees of the State Supreme Court. Thus this was not an impartial court such as was envisioned under the Sixth Amendment. The action by the Supreme Court of Georgia was in 1989 and Petitioner has been denied a hearing on the merits for some 27 years; his right to speedy trial has certainly been violated. In **Strunk**

⁵ Georgia Code Annotated, Section 15-19-30

v. United States⁶, the U.S. Supreme Court very clearly stated that if a reviewing court finds that a defendant's right to a speedy trial was violated that the indictment must be dismissed and or the conviction overturned. In spite of these holdings, Petitioner has been denied all of his constitutional rights even before this court, which violates the 14th Amendment to the U.S. Constitution.

Lest the State Bar of Georgia claim that they could submit the Petition under the State Administrative Procedures Act, according to the Georgia Administrative Procedures Act⁷, the Administrative Act was not intended to create or diminish any substantive rights or delegated authority. Even assuming that the Petition, though forged, is viewed as a confession by Petitioner of wrongdoing, under Georgia Law, a confession alone, uncorroborated by any other evidence shall not justify a conviction⁸.

In **Bradley v. Fisher**⁹, the U.S. Supreme Court held that in order to revoke or suspend the license of an attorney, the law requires that there should be an accusation and charges, a notice and a day in court and cannot be done summarily by order of the court. In this case, the U.S. Supreme Court made it clear that the law makes no difference between an attorney and other holding office during good behavior and other vested rights to be taken away by due process of law, and requires in every case or proceeding to take away such office right or franchise, that the party shall have notice and an opportunity to be heard, before the court can acquire jurisdiction to adjudicate and that jurisdiction is limited to the exercise of a legal discretion by a court and does not include arbitrary acts of

⁶ **Strunk v. United States**, 412 US 434 (1973)

⁷ Georgia Code, Title 50-13-1, the act was not intended to create or diminish any substantive rights or delegated authority.

⁸ Georgia Code Annotated, 24-3-53

⁹ **Bradley v. Fisher**, 60 U.S. 335, 20 L.Ed. 645 (1871)

a judge. The decisions of the U.S. Supreme Court are the law of the land, but this court, by its refusal to support Petitioner's right to due process of law has decided that these Constitutional protections do not apply to this Petitioner, in effect creating a new class of sub-citizen.

In spite of this refusal, the U.S. Supreme Court has made numerous decisions that make it clear that a judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights¹⁰ and is not entitled to respect in any other tribunal. However, in spite of these numerous rulings supporting the rights of the accused, the Supreme Court of the State of Georgia decided that this Petitioner had no right to due process of law. As shown in Appendix I of Petitioner's Corrected Petition for An Extraordinary Writ of Mandamus, Petitioner was punished for not taking part in a conspiracy to defraud his Black clients. The action by the State Bar of Georgia to take his license was in retaliation for his refusal to take part in the scheme.

The actions by the State Supreme Court, being held in secret with its own personnel acting as prosecutor, no jury, no attorney representing Petitioner, no subject matter jurisdiction nor personal jurisdiction and the only evidence used was not properly authenticated as required by State law¹¹ meet the definition of a star chamber and certainly violate all of the rights due this Petitioner. The actions of the State Supreme Court of Georgia were arbitrary and certainly in violation of both state as well as federal laws regarding due process of law and rise to the level of a Bill of Attainder.

The Bar's recommendation was submitted to the State Supreme Court, asking the Court to accept what they called Petitioner's resignation and, according to the record the

¹⁰ Sabariego v. Maverick, 124 US 261, 31 L.Ed 430, 8 S.Ct. 461

¹¹ Georgia Code Annotated 24-9-901

State Supreme Court without any examination of the so-called evidence, contrary to Georgia law, in violation of Petitioner's right to due process of law, accepted the State Bar of Georgia's recommendation. This was done with no service of process on or notification to Petitioner.

This quasi-administrative/judicial action violated the Georgia Rules of Evidence. Absent a finding by a properly empaneled jury that the signature was that of Petitioner, the document was not admissible in any Georgia Court as a matter of Georgia law. Based entirely on the recommendation of the State Bar of Georgia, which was based solely on the inadmissible purported resignation the Supreme Court of the State of Georgia accepted what was claimed to be Petitioner's resignation as an attorney and placed Petitioner in a status "tantamount to disbarment¹²."

The Supreme Court of the State of Georgia was without jurisdiction to take any action against Petitioner. As stated earlier, under the provisions of the Article VI, Section VI, paragraph 2 of the 1983 Constitution of the State of Georgia, the State Supreme Court was (and is) a court of review and shall exercise exclusive appellate jurisdiction only, over constitutional cases and election contest cases. It has no original jurisdiction as a matter of law.

The action to take Petitioner's license to practice law was handled as an administrative action under Rule 4-102 of the Georgia Bar rules. There was no legal complaint filed with the State Supreme Court against Petitioner, nor any attempt at service of process on Petitioner who lived out of State nor any notice to Petitioner of any charges, or even a notice that the action was being started. There being no pleadings filed

¹² In *The Matter of Robert K. Hudnall*, 259 Ga. 247, 379 SE2d 517 (Ga. 1989).

against Petitioner, there was no statement of any cognizable action against Petitioner, but the State Bar submitted the unauthenticated **Petition for Voluntary Surrender of License** to the Court which was a violation of Petitioner's right to due process.

The U.S. Supreme Court in **Miranda v. Arizona**¹³ very clearly stated that where rights secured by the Constitution are involved, there can be no rule making or legislation that would abrogate them. The Georgia Bar Rule, which allowed the submission of this document outside of normal judicial proceedings under an administrative rule, was a clear violation of **Miranda v. Arizona**.

Under **Scheuer v. Rhodes**¹⁴, the Court stated, that by law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person) when a judge acts as a trespasser of the law, when the judge does not follow the law, the judge loses subject matter jurisdiction and the judges' orders are not voidable but void and of no legal force or effect. The Court went on to say that when a state officer acts under a state law in a manner violative of the federal constitution, he comes into conflict with the superior authority of the Constitution and he is in that case stripped of his official or representative character and is subjected to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States. To deny Petitioner a hearing and to use inadmissible evidence against him is acting in a manner violative of the federal constitution.

¹³ **Miranda v. Arizona**, 384 U.S. 436, 491; 86 S.Ct. 1603.

¹⁴ **Scheuer v. Rhodes**, 416 U.S. 232, 94 S.Ct. 1683 (1974)

In Davis v. Wechler¹⁵, and Stomberg v. California¹⁶ and NAACP v. Alabama¹⁷, the Court held that the assertion of federal rights, when plainly and reasonably made, are not to be defeated under the name of local practice. Petitioner would show whom better to know the federal rights to be afforded to this Petitioner than the State Supreme Court, but they opted to deny him any rights.

The only evidence ever submitted against Petitioner was the **Petition for Voluntary Surrender of License** that Petitioner did not write or sign and under Georgia law was inadmissible in any court in the state. Under the Georgia Evidence Code, Title 24-1-2(b) states that the rules of evidence shall apply generally to all nonjury trials and other fact-finding proceedings of any court in this state subject to the limitations set forth in subsections (c) and (d) of this Code section.

Under the provisions of Title 24-10-1008 of the Georgia Code Annotated:

“When the admissibility of the other evidence of the contents of writings, records or photographs under the rules of evidence depends upon the fulfillment of a condition of fact, the question of whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Code Section 24-1-104; provided however that when an issue is raised as to:

- (1) Whether the asserted writing, recording or photograph ever existed;*
- (2) Whether another writing, record or photograph produced at the trial is the original; or*
- (3) Whether other evidence of the contents correctly reflects the contents,*

¹⁵ Davis, v. Wechler, 263 U.S. 232, 24

¹⁶ Stromberg v. California, 283 U.S. 359

¹⁷ NAACP v. Alabama, 375 U.S. 449

the issue is for the trier of fact to determine as in the case of other issues of fact.

The trier of fact in a legal setting is the jury. The State Supreme Court of Georgia is, by law, a court of review and thus could not empanel a jury. Therefore, the Petition was submitted and used in violation of Georgia Code Annotated sections 24-1-2(b) and 24-1-104 and 24-10-1008. The only Court to hear the matter was the Supreme Court of the State of Georgia, which had no constitutional jurisdiction to hear cases requiring original jurisdiction.

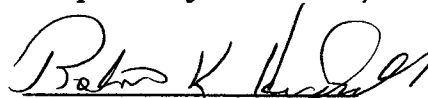
In Mullane v. Central Hanover Bank and Trust, Co. et. al.¹⁸, the U.S. Supreme Court set forth notice requirements where the property rights of a party are at stake. Thus Petitioner was entitled to notice before his license could be taken from him.

The U.S. Supreme Court held in Grannis v. Orlean¹⁹ that the fundamental requisite of due process of law is the opportunity to be heard which was denied this Petitioner. It should also be noted that at the time the so-called Petition for Voluntary Surrender of License was allegedly received by the State Bar, the State law required documents from out of state to be either witnessed or notarized to be admissible in any court. The document in question was neither.

CONCLUSION

This petition for an Extraordinary Writ of Mandamus ordering the decision in question to be considered void should be granted (Rule 20).

Respectfully submitted,


Robert K. Hudnall, J.D.

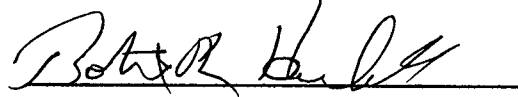
¹⁸ Mullane v. Central Hanover Bank and Trust, Co. et. al., 339 U.S. 306 (1950)

¹⁹ Grannis v. Orlean, 234 U.S. 385, 234 U.S. 394.

Petitioner, Pro Se
Date: December 18, 2017

CERTIFICATION OF PARTY

Now comes Robert K. Hudnall, Petitioner in the above styled action and do hereby certify that this Petition for Rehearing is restricted to the grounds specified in Rule 44 and it is presented in good faith and not for delay.

A handwritten signature in black ink, appearing to read 'Robert K. Hudnall', is written over a horizontal line.

Robert K. Hudnall, Petitioner

Date: December 18, 2017

Ken@kenhudnall.com